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5 KARYN JOY GROSSMAN,
6 Plaintiff,
7 v.
8 JOHNSON & JOHNSON, et al.,
9 Defendants.

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11 Case No. 14-cv-03557-VC

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13 **ORDER GRANTING MOTION TO**
TRANSFER

14 Re: Dkt. No. 56

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16 The defendants' motion to transfer is granted.

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18 Section 1404(a) provides: "For the convenience of parties and witnesses, in the interest of
19 justice, a district court may transfer any civil action to any other district or division where it might
20 have been brought." "Section 1404(a) is intended to place discretion in the district court to
21 adjudicate motions for transfer according to an individualized, case-by-case consideration of
22 convenience and fairness." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988). The statute
23 requires a two-step analysis. Because the parties do not dispute that the action could have been
24 brought in the District of Maryland, only the second step—whether the convenience of the parties
25 and witnesses and interest of justice favor transfer—is at issue here. *See Hatch v. Reliance Ins.*
Co., 758 F.2d 409, 414 (9th Cir. 1985).

26 Transfer under § 1404(a) requires "a lesser showing of inconvenience" than dismissal for
27 forum non conveniens. *Norwood v. Kirkpatrick*, 349 U.S. 29, 32 (1955). The burden of
28 demonstrating inconvenience falls on the party seeking transfer. *Commodity Futures Trading
Comm'n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979). In determining whether transfer is
appropriate in any particular case, the district court may consider a number of factors, including:

(1) the location where the relevant agreements were negotiated and executed, (2)
the state that is most familiar with the governing law, (3) the plaintiff's choice of
forum, (4) the respective parties' contacts with the forum, (5) the contacts relating
to the plaintiff's cause of action in the chosen forum, (6) the differences in the

1 costs of litigation in the two forums, (7) the availability of compulsory process to
2 compel attendance of unwilling non-party witnesses, and (8) the ease of access to
3 sources of proof.

4 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000) (footnotes omitted).

5 The convenience of the witnesses, particularly non-party witnesses, is often the most
6 important factor. *See Florens Container v. Cho Yang Shipping*, 245 F. Supp. 2d 1086, 1092 (N.D.
7 Cal. 2002); *see also Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1160 (S.D. Cal. 2005). The Court
8 must also consider the relative importance of the witnesses. *See Gates Learjet Corp. v. Jensen*,
9 743 F.2d 1325, 1335-36 (9th Cir. 1984) (explaining, in a forum non conveniens case, that "the
10 court should have examined the materiality and importance of the anticipated witnesses' testimony
11 and then determined their accessibility and convenience to the forum"). And although a plaintiff's
12 choice of forum is generally accorded significant weight, this weight is substantially lessened
13 where the plaintiff does not reside in the forum and the acts that gave rise to the case did not occur
14 in that forum. *See Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968).

15 The plaintiff alleges that she developed peripheral neuropathy as a result of taking the
16 prescription antibiotic medicine Levaquin, and that Levaquin's manufacturer, Defendant Janssen
17 Pharmaceuticals, and a Levaquin distributor, Defendant McKesson Corporation, failed to warn her
18 of that risk. The plaintiff is a resident of Maryland. She does not allege that any events directly
19 related to her injuries took place in California. The plaintiff's doctors and all documents related to
20 her medical, pharmacy, insurance, and employment records are located in Maryland. However,
21 McKesson's principal place of business is within the Northern District of California, and the
22 plaintiff argues that, under California law, McKesson's role as a participant in the chain of
23 distribution for Levaquin renders McKesson strictly liable for the alleged failures to warn. Docket
24 No. 57 at 9.

25 To be sure, the Northern District of California is a convenient forum for McKesson. But
26 the Northern District of California's convenience for McKesson is offset heavily by the
27 inconvenience to important third-party witnesses (and the fact that important documentary
28 evidence is located in Maryland). Assuming that McKesson may indeed be held strictly liable for
its role in the distribution of Levaquin, the importance of live testimony at trial from any

1 McKesson witnesses to establish this role pales in comparison to the importance of witnesses such
2 as the plaintiff's prescribing physician. And there is no means to compel the attendance of the
3 plaintiff's doctors at any trial in the Northern District of California. Particularly given the
4 plaintiff's lack of contacts with her chosen forum, the remaining factors don't come close to
5 counterbalancing the above factors that militate in favor of transfer.¹

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7 **IT IS SO ORDERED.**

8 Dated: April 13, 2015



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10 VINCE CHHABRIA
United States District Judge

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United States District Court
Northern District of California

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28 ¹ In addition to arguing that a number of the *Jones* factors weigh against transfer, the plaintiff
contends that transfer is inappropriate because there are several related actions pending before the
Court. The existence of a related action can be an important consideration "because of the positive
effects it might have in possible consolidation of discovery and convenience to witnesses and
parties," *A. J. Indus., Inc. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 503 F.2d 384, 389 (9th Cir.
1974). Here, however, while litigating all the related cases in the Northern District of California
might be more convenient for the defendants, there do not appear to be any corresponding benefits
in terms of convenience for the plaintiff or any non-party witnesses. And by moving for transfer,
the defendants have demonstrated that they are willing to forgo any such benefit. Consequently,
the Court is not persuaded that the pendency of related cases in this district outweighs the factors
that strongly favor transfer. Of course, if the plaintiff believes that coordinated or consolidated
pretrial proceedings are necessary to avoid duplicative discovery or otherwise conserve the parties'
resources, the plaintiff is free to file a motion for centralization with the Joint Panel on
Multidistrict Litigation.